IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PUBLIC LAW DIVISION

2024/PUB/jrv/ 00020

IN THE MATTER of the properties known as the Four Darby Islands and being Big Darby Island, Little Darby Island, Guana Cay, Betty Cay (**"the Darby Islands"**) and which are owned by Darby Shores Ltd.

AND IN THE MATTER of Sections 23, 25, 25A and 25C of the Real Property Tax Act (Chap. 375).

BETWEEN:

DARBY SHORES LTD.

Applicant

-and-

THE TREASURER OF THE COMMONWEALTH OF THE BAHAMAS

Respondent

Before:	The Honourable Justice Darron D. Ellis (Acting)
Appearances:	Christopher Jenkins KC with Ramone Gardiner and Mc Falloughn Bowleg of Lennox Paton for the Applicant
	Kenria Smith of the Office of the Attorney General for the Respondent
Hearing Date:	18 July 2024

DECISION

Public Law - Judicial Review — Chief Valuation Officer -Controller of Inland Revenue-The Treasurer of the Commonwealth of The Bahamas-Decision to make an Interim Order –

Limited in time – Serious and irreparable harm – Threshold for leave to apply for Judicial Review and Interim Injunction in Support – Alternative remedy - Extant Notice of action involving decision in the Supreme Court -Remedy of last resort – Breach of the rules of natural justice.

Ellis J (Acting)

Introduction

1) The Applicant, a joint venture company that owns and manages four islands called the Darby Islands ("the Islands") in the Commonwealth of The Bahamas, seeks leave to apply for Judicial Review and an Interim Injunction with respect to a decision of the Department of Inland Revenue to issue a "Notification of Sale by auction pursuant to Section 25 A of the Real Property Tax Act, thereby notifying the Applicant of its decision to sell the Islands by public auction on 12 August 2024" ("the Decision").

2) The applications were heard on 18 July 2024, and this Court reserved its decision pending further submissions.

3) On 5 July 2024, the Applicant issued an urgent application for leave to apply for Judicial Review of the Decision and an application for an Interim Injunction pursuant to Rule 54.3 of the Supreme Court Civil Procedure Rules 2022 (CPR) that the Respondent be restrained directly, or through their agents, appointees, or employees, from advertising the Islands for sale by auction or otherwise and exercising its power of sale.

Salient Facts

4) The facts are largely not in dispute. To the extent that there may appear to be a departure from the undisputed facts, what is stated is gleaned by the Court from the affidavits and documentary evidence presented to the Court. The Court notes that there has been no cross-examination of any of the affiants, so greater reliance is placed upon contemporaneous documentary evidence.

The Applicant

5) The Applicant was incorporated in 1992 as a joint venture company to hold and manage the Islands. The four "partners" in the joint venture were the shareholders of the Applicant at that time: Mr. William Cook, Mr. Richard Davis, Mr. William Saeger, and Dr. William Chester.

6) In or around 2010, the Applicant began accruing real property taxes. As a result, the Applicant made certain early efforts to sell one or more of the Islands, as it was intended to pay the arrears from the proceeds.

7) By 2023, the outstanding taxes owed were as follows:

Big Darby Island:	$4,656,094.58
Little Darby:	$3,441,174.62
Guana Cay:	$986,279.34
Betty Cay:	$120,345.96
Total:	$9,203,894.50

8) As a result of these outstanding sums and demand notices from the Respondent, and given that the Islands produced very little income, on 10 July 2023, the shareholders of the Applicant unanimously resolved to sell all the Islands.

9) On 17 July 2023, the Applicant, acting by its President, Mr. Cook, duly signed an exclusive listing agreement with Coldwell Banker Lightbourn Realty to act as the Applicant's real estate agency for the listing, marketing, and sale of the Islands for $44,500,000 (the "Listing Agreement").

10) While the Listing Agreement referred to a price of $44,500,000, this sum was not based on any appraisal and was only for the sale of the larger two of the four islands.

11) On 9 August 2023, the Respondent issued a final demand to the Applicant for payment of the real property taxes accrued with respect to the Islands.

The Darby Proceedings 2023 CLE/gen/00670

12) On 11 August 2023, due to a shareholder dispute between the shareholders of the Applicant, a Supreme Court action (2023 CLE/gen/00670) was commenced. Dr. William Chester, one of the shareholders, applied for the appointment of Receivers over the Islands.

Supreme Court Orders

13) The application for the appointment of Receivers was heard on 29 August 2023, and an ex-parte order was made by Honourable Justice Donna Newton ("Newton J"), appointing Lindsey John Cancino and Marcia Woodside as receivers ("the Receivers") over the Darby Islands for the purpose of:

"resolving the outstanding real property taxes affecting the Darby Islands with the DIR(Respondent) by taking charge of the Asset and taking charge of the process of the marketing, advertising, and negotiating of the Darby Islands for a proposed sale or any one or more of them, or developing a plan for financing to settle the taxes, or coming up with any other plan, matter or thing that will cause a settlement of the taxes and prevent the Darby Islands being subject to a forced Bahamas government sale at auction, or other governmental confiscatory relief".

14) By a Purchase and Sale Agreement dated 18 September 2023, the Receivers entered into an agreement (conditional only on Court approval) to sell the Islands for a net purchase price of US$33,315,542.00, subject to the Court's approval.

15) On 16 November 2023, the Receivers made an application before the Honourable Senior Justice Deborah Fraser ("Fraser SJ") for the approval of the sale of the Darby Islands to Darby Exumas Ltd. ("DEL") on the terms of the Purchase and Sale Agreement (the "Approval Application").

16) On the hearing date, the Applicant's shareholders did not oppose the Approval Application, and Fraser SJ indicated orally that in those circumstances, the Court approved the sale (the Approval Order). The Approval Order of Fraser SJ was never perfected.

17) Since the making of the Approval Order, appraisals have been conducted that demonstrated that the agreed selling price was very likely a significant undervalue. The two appraisals listed the value of the Islands as $67,883,520 and $65,000,000, respectively.

18) As a result, largely of this development, and prior to the perfection of the Approval Order of Fraser SJ, certain shareholders applied to Fraser SJ for orders that:

a. **the Approval Order be set aside;**

b. **the Ex-Parte Order be discharged; and that**

c. **Igal Wizman of EY Bahamas and Mike Penrose of EY Bermuda be appointed as replacement receivers to conduct a proper sales and marketing process of the Darby Islands, to sell the Darby Islands at a price reflective of, or at a minimum, far closer to, its true market value for the purpose of resolving the outstanding real property taxes.**

19) It is to be noted that two of the shareholders continue to support the Approval Order.

20) The Receivers agreed not to sell the Islands until the final hearing of the application. This application is now listed to be heard on 4 October 2024 before Fraser SJ.

Communications with the Respondent regarding the Darby Proceedings

21) The Respondent has been kept up to date with respect to the Darby Proceedings by the Applicants via emails, including being notified of the 4 October 2024 hearing fixture before Fraser SJ.

Decision of the Respondent to sell the Darby Islands

22) On 20 June 2024, the Respondent, despite knowledge of the Court's Orders and the pending application before Fraser SJ, issued a "Notification of Sale by Public Auction Pursuant to Section 25A of the Real Property Tax Act, As Amended", notifying the Applicant of the Decision of the Respondent to sell the Islands by public auction on 12 August 2024. This decision is the subject of the Judicial Review Application.

Real Property Tax Regime

23) The Applicant submits that the express provisions of the Real Property Tax Act ("RPTA") grant to the Respondent an extraordinary power, having the following features:

- Unlike most forms of enforcement, the exercise of the power of sale is a purely executive act, requiring no Court approval (subsection 25A (3));
- The Treasurer "may" fix a reserve price but is under no statutory obligation to do so (subsection 25E(b));
- If the Treasurer does fix a reserve price, it cannot be less than the amount of tax due plus penalties and interest thereon and the cost of advertising and conducting the sale (subsection 25A (8)). The reserve price need not, however, represent the best price reasonably achievable or the market value of the property being sold: it is referable only to the debt due to the Respondent plus costs of sale.

24) The Applicant submits that notwithstanding, but rather because of, those extraordinary and wide-ranging executive powers, that the exercise of those powers is amenable to Judicial Review.

<u>The Issues</u>

25) The issues for consideration are:

1) Whether the Applicant has met the threshold for leave to apply for Judicial Review and;
2) If so, whether interim relief of injunction and disclosure should be granted in support of the Judicial Review application.

Issue 1: Whether the Applicant has met the threshold test for the grant of leave?

26) Rule 54.3 of the CPR mandates that no application for Judicial Review shall be made unless the leave of the Court is first obtained. Rule 54.3 directs that leave shall not be granted unless the Court is satisfied that the applicant has "a sufficient interest" in the matter to which the application relates.

27) The grounds that an applicant must establish for the grant of leave to commence judicial review proceedings as per Rule 54 of the CPR were highlighted by Forbes J in a recent decision in **Jarol Investments Limited v The Hon. Chester Cooper, Deputy Prime Minister, Member of Parliament for The Exumas and Ragged Island, Minister of Tourism, Investments and Aviation and another** [2023] 1 BHS J. No. 155, at paragraph 9:

> **On an application for leave to apply for Judicial Review, the Applicant has an exceptionally low threshold to meet.** However, the Applicant has to establish (i) that he/she has a sufficient interest in the matter to which the application relates; (ii) that the application was made promptly and in any event within six months from the date when the grounds for the application first arose; and (iii) there is an arguable ground with a realistic prospect of success. The Court also has to consider whether the applicant has an alternative remedy available that would lead the Court to refuse the leave.

Sufficient Interest

28) The Applicant's interest is clear. The Applicant has a direct interest in the surplus of the sale proceeds after the real property tax debt is discharged to the Respondent. The Respondent does not challenge the Applicant in this regard. Outside the Respondent, there is no one with a more direct and vested interest.

Promptness of the Application

29) The second requirement under Rule 54 treats with the promptness of the application and whether the application was made within six months of the Decision in issue. Rule 54.4 (1) provides that:

> "An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers there is good reason for extending the period within which the application shall be made."

30) On 20 June 2024, the Respondent published a Notification of Sale by public auction pursuant to Section 25A of the RPTA. The application for leave to commence judicial review was made

less than a month after such publication. It cannot be reasonably contended that the application for leave was made anything other than promptly. This point also went unchallenged by the Respondent.

Arguable Ground with a Realistic Prospect of Success

31) The general rule is that leave will usually be granted when an applicant discloses an arguable case with a realistic prospect of success. The Court is not concerned with the merits of the Decision, nor is the Court required to investigate fully and extensively the Applicant's case. The Court is concerned with the decision-making process itself, i.e., with the legality and/or rationality of the Decision.

32) In **Inland Revenue Commissioners v National Federation of Self Employed and Small Business Ltd [1981] A.C. 617**, Lord Diplock summarized the requirement in this way at 643 - 644:

> "The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at this stage. If, on a quick perusal of the material available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favor of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in, and the matter has been fully argued at the hearing of the application."

33) In making this determination of whether the Applicant has an arguable case with a realistic prospect of success, I also consider the leading case of **Sharma v Browne-Antoine (2006) 69 WIR 379; UKPC 57; [2007] 1 WLR 780 AT 787** where the Privy Council stated:

> **The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy:** R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R(N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability: 9 "... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus, the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities." It is not enough that a case is potentially arguable: an applicant cannot plead

potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733.

34) Counsel for the Respondent opposes the application and submits that the application itself is irrational. Counsel further submits that there is no arguable case, therefore, leave should not be granted for Judicial Review of the Decision. Counsel adds that the Respondent has been trying for years to cooperate with the Applicant and collect the outstanding taxes and that the Decision to sell the properties under a power of sale is rational and reasonable and the only way the Respondent would be able to collect the taxes due. It was noted that final demand letters were sent to the Applicant in October 2022, demanding payment in 15 days or legal action would be taken.

35) Counsel for the Applicant submits that leave should be granted because the Decision of the Respondent is unlawful, irrational, and procedurally unfair in the circumstances because:

- The Decision circumvents the Court-Ordered sale by receivers;
- The Decision by the Respondent to proceed with a sale by auction will, inevitably, be on less favorable terms than a sale by a Court-appointed receiver;
- The Respondent failed to obtain its own appraisal;
- The price at which the Respondent is listing the Islands is at a tremendous undervalue;
- The sale is being proposed without adequate marketing.

36) Counsel for the Applicant further submits that, as a result, the sale of the Islands will be at less than the actual market value, to the detriment of the Applicant, the Respondent, and the Bahamian people. A sale at a lower price will result in a shortfall of taxes that could be collected.

Discretionary Bar to Leave: The Alternative Remedy

37) Counsel for the Applicant pointed out that there is no avenue to appeal the Respondent's decision regarding the exercise of the power of sale other than by Judicial Review. The other side did not submit otherwise. I am satisfied that the Applicant has exhausted all other avenues before seeking Judicial Review.

38) In my view, this is a proper case where the Court ought to exercise its discretion and grant leave to the Applicant for Judicial Review. I am satisfied that the Applicant has made out an arguable case that the Decision is irrational and/or procedurally improper. I am also satisfied that it has realistic prospects of success.

39) The classic definition of unreasonableness is to be found in the judgment of *Lord Green MR* in **Associated Provincial Picture Houses Limited v Wednesbury Corporation** [1947] 2 All ER 680, 234: A decision may only be quashed if it is "so unreasonable that no reasonable [decision-maker] could ever have come to it."

40) If the properties are undervalued, their taxes are being under-assessed and a further sale at a lower price will result in a shortfall of taxes that could be collected. It is at least arguable that no reasonable decision maker would make the Decision, having not conducted an appraisal of its own, armed with the knowledge that the properties are likely grossly undervalued (and therefore under-assessed) and that a sale could result in a shortfall of taxes that could be collected.

41) I must also note that the Court has already ordered the sale of the Islands to be done in a certain manner. The Respondent is aware of this and nonetheless seeks this Court's affirmation in the Respondent's apparent disregard for the extant Orders of Fraser SJ and Newton J.

42) The appropriate method of sale of the Islands is already the subject of the Darby Proceedings. While the Respondent is not a party to that action, it has been kept informed of the progress of the Darby Proceedings, which are listed for a hearing before Fraser SJ that is likely to be determinative of the choice of receivers and terms of sale.

43) Notwithstanding its statutory power, the notification provided by the Respondent of its intention to sell the Islands at auction will circumvent and render nugatory the Order of Fraser SJ dated 29 August 2023, the purpose of which was specifically to avoid and prevent a sale by the manner the Respondent is seeking. It is at least arguable that no reasonable decision maker would make the Decision properly appraised of these facts. It would have been more prudent for the Respondent to have stayed any action in respect of the property or, at the very least, joined the Darby Proceedings and seek directions from the Court.

44) Given that the Court has decided upon an appropriate procedure for the sale of the Islands and there is a subsisting Order giving effect to this along with a pending application, it is unreasonable for the Respondent to proceed with a sale by auction contrary to that Court Order. Moreover, the failure of the Respondent to engage with the Darby Proceedings as the proper forum for the resolution of the issue of the sale of the Islands, having been kept informed of their progress, is arguably irrational and procedurally unfair.

45) I am satisfied on the evidence before me that there is an arguable case that the Respondent's decision may be irrational and procedurally unfair in the circumstances and may have been

taken without proper regard for natural justice, the aforementioned Court Orders, and for the pending application that is presently before Fraser SJ.

46) Having satisfied myself that the Applicant has met the threshold requirement for leave to apply for Judicial Review, I now turn my attention to whether the grant of leave is subject to a discretionary bar, such as whether there are alternative remedies.

Issue 2: Whether Interim Relief in Support of Judicial Review Proceedings should be Granted?

Jurisdiction

47) The jurisdiction to grant injunctions in support of Judicial Review proceedings is exercisable pursuant to section 21 of the Supreme Court Act and CPR Rule 54.3(10)(b). CPR Rule 54.3(10) provides:

> (10) Where leave to apply for judicial review is granted, then —
>
> (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
>
> (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

48) In **Regina v. The Water and Sewerage Corporation and others** [2008] 5 BHS J No. 79, the Court of Appeal approved the following statement of the law as to the grant of interim relief in judicial review proceedings, at paragraph 19:

> 19 The practice and procedure in The Bahamas relating to applications for interlocutory injunctions or other interim relief pending the determination of the substantive judicial review proceedings follow the practice and procedure stated in the following passage in The Supreme Court Practice (The White Book) 1999 Vol. 1:
>
> > 53/14/48 Practice and procedure relating to application for interlocutory relief - In R. v. Kensington & Chelsea Royal London Borough Council, ex p. Hammell [1989] 1 All E.R. 1202, the Court of Appeal held:
> >
> > > (1) The jurisdiction to grant interim relief in judicial review proceedings arises on the grant of leave to move for judicial review. An application for an interlocutory injunction or other interim relief can be made ex parte with the application for

leave. In deciding whether to grant interlocutory relief at the ex parte stage, the Judge should consider whether the urgency and the other circumstances of the case warrant the grant of ex parte relief and should have regard to the approach adopted in the case of applications under 0.29 for ex parte relief. Unless the Judge is satisfied that the urgency and other circumstances of the case justify the grant of ex parte relief, he should adjourn the application for interlocutory relief for inter partes hearing.

(2) With a view to avoiding two hearings, the applicant should give notice to the respondent (s) of any ex parte application for interim relief, so that the respondent (s) can consider whether to attend the ex parte hearing and make representations.

(3) Applying De Falco v. Crawley Borough Council [1980] 1 Q.B. 460; [1980] 1 All E.R. 913, interim relief by way of mandatory injunction should be granted only where a strong prima facie case of breach of duty has been made out at the interlocutory stage. Cf. R. v. Cardiff City Council, ex p. Barry, CA, November 6, 1988 (unrep.) where the Court of Appeal granted an injunction at the ex parte stage when granting leave to move for judicial review in respect of a local authority's decision under ss. 62 and 63 of the Housing Act 1985.

The power to grant an interlocutory injunction or other interim relief in judicial review proceedings is ancillary to the application for leave to move for judicial review, or the substantive application for judicial review. The judge can grant an interlocutory injunction or other interim relief pending the hearing of the application for leave to move for judicial review. But if the Judge has refused leave to move for judicial review, he is functus officio and has no jurisdiction to grant any form of interim relief. The application for an interlocutory injunction or other interim relief could, however, be renewed before the Court of Appeal along with the renewal of the application for leave to move for judicial review. If the Judge grants leave to move for judicial review but refuses the application for an interlocutory injunction or other interim relief, the applicant can appeal to the Court of Appeal against that refusal. (See the analogous situation regarding bail in judicial review proceedings and the case of Turkoglu which is explained in paras 53/14/52 and 53/14/53).

This passage was cited with approval in M. v. Home Office [1993] 3 W.L.R. 433, 464; [1993] 3 All E.R. 537, 565.

53/14/49 Interlocutory injunctions in judicial review proceedings - An interlocutory injunction can be obtained in judicial review proceedings pending the determination of the substantive judicial review application, or, if the urgency of the case justifies it pending the hearing of the leave application. The approach to applications for interlocutory injunctions in judicial review proceedings is similar to that adopted in the case of applications under O. 29 or an interlocutory injunction in an ordinary action (See R. v. Kensington and Chelsea Royal London Borough Council, ex p. Hammell [1989] Q.B. 518; [1989] 1 All E.R. 1202, above).

In M. v. Home Office [1993] 3 W.L.R. 433; [1993] 3 All E.R. 537, HL. It was held that injunctions, including interlocutory injunctions, can be granted against ministers and Crown servants, see further para 53/14/43 and 53/14/44.

The Test

49) The foremost authority as to how the Court should approach the grant of interim relief is **American Cyanamid Co. Ltd. v. Ethicon** [1975] AC 396 as highlighted in **Dyphany Mortier and another v. Darnette Weir and another** [2020] 1 BHS J. No. 110, where Klein J summarized the applicable principles for the grant of an interlocutory injunction:

> 16. As is made clear by the phrase "just and convenient", the grant of an interlocutory injunction is a matter of discretion. But as is the case with all forms of judicial discretion, it is to be exercised on the basis of judicial principles, the most important of which are those set out in American Cyanamid Co. Ltd. v Ethicon [1975] AC 396 by Lord Diplock. They are often explicated by way of a structured four-part test as follows:
>
> > (i) whether there is a serious issue to be tried;
> >
> > (ii) whether damages would be an adequate remedy for any loss sustained by either party pending the outcome of the trial;
> >
> > (iii) whether the 'balance of convenience' favours the plaintiff or defendant if there is any doubt as to the adequacy of the respective remedies available in damages;
> >
> > (iv) whether there are any special factors that might affect the court's consideration of the matter.

50) In the Privy Council case of **National Commercial Bank of Jamaica Ltd. v Olint Corp. Ltd. 2009 UKPC 16**, on appeal from the Court of Appeal of Jamaica, the Privy Council stated at paragraph 16:

> **...It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedoms of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.**

Further, at paragraph 17:

> **The basic principle is that the court should take whichever course of action seems likely to cause the least irremediable prejudice to one party or the other.**

51) In the public law context, the following guidance to the grant of interim relief was given in **Paradise Games Limited (D/B/A Paradise Games) v. The Attorney General of the Bahamas (In a Representative Capacity); Deveaux (D/B/A Percy Web Cafe) and others v. The Attorney General of the Bahamas (On her own behalf and in a representative capacity for the Minister of National Security, the Minister of Tourism and the Commissioner of Police)** [2013] 1 BHS J. No. 48, paragraphs 27-28:

> The Court is obliged to be satisfied that the action involves a serious issue which should be resolved in the action and that unless an injunction is granted pending the determination of the dispute the applicant is likely to suffer a loss for which he cannot be compensated by an award of damages. If damages will not be an adequate remedy for any such loss suffered, the court must look to the balance of convenience weighing all of the relevant factors with the counsel of prudence being in favor of the preservation of the status quo.

In **Belize Alliance of Conservation Non-Governmental Organizations v Department of the Environment of Belize** [2003] UKPC 63, the Privy Council said:

> Counsel were agreed (in the most general terms) that when the court is asked to grant an interim injunction in a public law case, it should approach the matter on the lines indicated by the House of Lords in American Cyanamid Company v Ethicon Limited [1975] AC 396, but with modifications appropriate to the public law element of the case. The public law element is one of the possible "special factors" referred to by Lord Diplock in that case (at page 409). Another special factor might be if the grant or refusal of interim relief were likely to be, in practical terms, decisive of the whole case; but neither side suggested that the present case is in that category.

52) The Applicant has applied for an order that the Respondent be restrained from exercising its power of sale pending the full hearing of the Judicial Review Application.

53) With respect to the injunction, Counsel for the Respondent submits that the Court does not have the jurisdiction to order an interim injunction against the Crown, including the Respondent. In this regard, she relied upon Section 14 of the Crown Proceedings Act. Counsel for the Applicant contended that Section 14 does not apply in the present circumstances.

54) Klein J in **Samuel Bankman-Fried v Attorney General** PUB/jrv/00015 of 2023 gives useful guidance in this regard, he states at para 77:

> The first of these statements of principle is unexceptionable, but it has no relevance to the matter at hand. Paradise Games concerned the enforcement of criminal laws, which admitted of no discretion, and that is not the case here. As to the second, no permanent injunction is being sought, and in any event, the law is settled that a minister or other officer of the Crown is subject to injunctive relief (whether interlocutory or final) when acting in his official capacity: see M v Home Office [1994] A.C. 377.

55) The Court will approach the grant of an interim or interlocutory injunction in a public law case on the familiar principles set out in **American Cyanamid Co. v Ethicon** [1975] AC 396 but "with modifications appropriate to the public law element of the case" as one of the "special factors" referred to by Lord Diplock.

56) Again, I accept the submissions of Counsel for the Applicant. It is illogical to grant leave for Judicial Review of a decision to exercise a power of sale and yet allow the sale to take place before the Judicial Review is heard, therefore, undermining the substantive reason for the review. If there is no injunction, there exists the real possibility that the properties will be sold on 12 August 2024.

57) The aforementioned authorities satisfy me that this Court has the jurisdiction to grant an interim injunction against the Crown, and its officers and agents. In this regard, the balance of convenience favors the Applicant.

58) I, therefore, grant the interim injunction as prayed.

Addition of 2nd Respondent

59) During the hearing, it was revealed by the Respondent that the decision in question was specifically taken by the Chief Valuation Officer and Controller of Inland Revenue. As a result, Counsel for the Applicant made an oral application to add the Chief Valuation Officer and Controller of Inland Revenue as a Respondent in these proceedings. The other side did not oppose this application.

60) The Court has the power under CPR rule 19.2(3) to (5) to order the addition or substitution of a party without an application:

> (3) The Court may add a new party to proceedings without an application, if –
>
> (a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or
>
> (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the Court can resolve that issue.
>
> (4) The Court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.
>
> (5) The Court may order a new party to be substituted for an existing one if –
>
> (a) Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
>
> (b) existing party's interest or liability has passed to the new party.

61) In this regard I accede to the application of the Applicant.

CONCLUSION AND DISPOSITION

62) For the reasons given above, I make the following orders (which counsel are invited to transpose into a draft Minute of Order):

(I) Leave is granted to the Applicant to amend the application for Judicial Review in the proceedings by adding the Chief Valuation Officer and Controller of Inland Revenue as a Respondent in these proceedings.

(II) Leave is granted to the Applicant to commence proceedings for Judicial Review against the Respondents for the relief claimed, and, on the grounds, indicated in the application for Judicial Review.

(III) The Respondents shall be and are hereby restrained from exercising their power of sale over the Islands pending the final determination of the Applicant's Judicial Review application.

I order that the costs of this application be costs in the cause.

Dated this 31st day of July 2024

Darron D. Ellis

Justice (Acting)